IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.Rev.Pet.No. 3141 of 2007()

CRA.292/2005 of ADDL. SESSIONS COURT, (ADHOC), PALAKKAD
CC.453/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED

P.H.NOUSHAD, S/O.HAMSA,
PARAPPATHODY, MEPPARAMBA,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: 1ST RESPONDENT/COMPLAINANT

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1. PRAYESH KUMAR,
S/O.P.KANDANKUTTY, NILA NAGAR, YAKKARA,
PALAKKAD DISTRICT.

2. STATE OF KERALA- REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3141 OF 2007 C

Dated this the 24th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.453/2003 on the file of the J.F.C.M.-II, Palakkad challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel appearing for the revision petitioner submitted the following before me:-

The 1st respondent complainant(PW1), has admitted that there was only one transaction with the accused. The accused has produced Ext.X1 ledger extract through DW1, the Bank Manager, to show that on 13.7.01 the accused had borrowed a sum of Rs.50,000/- from the complainant as per a cheque. According to the accused, this sum of Rs.50,000/- was repaid by him. But the complainant did not return the cheque leaf in spite of his demand and when the complainant was approached, he said that he would not take any action against the accused. In the light of this evidence, the case of the complainant that the accused borrowed a sum of Rs.2,00,000/- as evidenced by Ext.P2 cheque dated 22.5.03 cannot be believed. This evidence adduced by the accused has the effect of rebutting the presumption under sections 118 and 139 of the Negotiable Instruments Act.

5. I cannot agree with the above submissions. Even if the transaction dated 13.7.01 was a loan transaction of Rs.50,000/- covered by a cheque issued by the complainant to the accused, his case that he had repaid the said amount and his explanation regarding the failure on the part of the complainant to return the cheque leaf cannot be accepted for a moment. If the amount borrowed was Rs.50,000/-, an explanation is due as to why he gave a signed blank cheque to the complainant/accused instead of giving a cheque for the exact amount or an amount together with the interest calculated as per the agreement

between the parties. Instead, he would say that he had handed over a signed blank cheque to the complainant. His further defence is that he had discharged that liability by paying the amount. The said discharge is not evidenced by any scrap of paper. If, according to him, even after repaying the loan, the blank cheque leaf was not returned by the complainant, he should have, as a reasonable and prudent man, taken steps for return of the cheque leaf even if the complainant was unjustifiably raising a dispute regarding interest. That was also not done. Under these circumstances, the admission by PW1 that there was only one transaction can only relate to the transaction covered by Ext.P1 cheque for Rs.2,00,000/- and not for Rs.50,000/- as contended by the revision petitioner. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the

1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.2,00,000/- (Rupees two lakhs only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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